

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
James R. Winstead)	File No.: EB-FIELDSCR-14-00013418
)	NAL/Acct. No.: 201432500003
Licensee of Amateur Station KD5OZY)	FRN: 0005642657
Coleman, Texas)	
)	

ORDER

Adopted: April 22, 2014

Released: April 22, 2014

By the Regional Director, South Central Region, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has settled its investigation into whether James R. Winstead operated a radio transmitter to interfere with the communications of other amateur licensees. The Commission's amateur radio rules prohibit wilful or malicious interference with any radio communication or signal. Mr. Winstead's transmissions prevented other licensees from completing their conversations and disrupted amateur communications in the area. Mr. Winstead has admitted that his actions violated the Commission's rules and agreed to voluntarily relinquish his amateur license and make a one thousand dollar (\$1,000) voluntary contribution to resolve the Bureau's investigation.

2. In this Order, we adopt the attached Consent Decree entered into between the Bureau and Mr. Winstead. The Consent Decree terminates the investigation and Notice of Apparent Liability for Forfeiture issued by the Bureau of possible violations of Section 333 of the Communications Act of 1934, as amended,¹ and Section 97.101(d) of the Commission's rules² concerning Mr. Winstead's operation of a radio transmitter to interfere with the communications of other amateur licensees.

3. The Bureau and Mr. Winstead have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, terminating the investigation.

5. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) and 503(b) of the Communications Act of 1934, as amended,³ and Sections 0.111 and 0.311 of the Commission's rules,⁴ the Consent Decree attached to the Order **IS ADOPTED**.

¹ 47 U.S.C. § 333.

² 47 C.F.R. § 97.101(d).

³ 47 U.S.C. §§ 154(i), 503(b).

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested to James R. Winstead at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

⁴ 47 U.S.C. §§ 0.111, 0.311.

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (Bureau), by its authorized representative, and James R. Winstead, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into Mr. Winstead's violations of Section 333 of the Communications Act of 1934, as amended,¹ and Section 97.101(d) of the Commission's rules.²

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Mr. Winstead is subject by virtue of his operation of radio transmitting equipment.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (g) "Investigation" means the investigation commenced by the Bureau regarding Mr. Winstead's operation of a radio transmitter on the frequency 7.195 MHz and interference with licensed communications, which resulted in the issuance of a Notice of Apparent Liability for Forfeiture, DA 14-204 (Enf. Bur. Feb. 19, 2014) (NAL).

¹ 47 U.S.C. § 333.

² 47 C.F.R. § 97.101(d).

- (h) “Parties” means Mr. Winstead and the Bureau, each of which is a “Party.”
- (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 333 of the Act prohibits any person from willfully or maliciously interfering with or causing interference to any radio communications of any licensed station.³ Section 97.101(d) of the Rules states that “[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.”⁴

4. On January 21, 2014, in response to several complaints, the Bureau determined that Mr. Winstead was intentionally interfering with other licensed amateur communications on the frequency 7.195 MHz. During an inspection of the station, Mr. Winstead admitted that he had been trying to interfere with other amateur licensee’s communications and showed an agent how he caused such interference. On February 19, 2014, the Enforcement Bureau issued the *NAL* to Mr. Winstead and found him apparently liable for a \$7,000 forfeiture for his apparent violations of Section 333 of the Act and Section 97.101(d) of the Rules.

5. In response to the *NAL*, Mr. Winstead provided financial documentation demonstrating that he is unable to pay the proposed forfeiture.

III. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

7. **Jurisdiction.** Mr. Winstead agrees that the Bureau has jurisdiction over him and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Mr. Winstead agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new

³ 47 U.S.C. § 333.

⁴ 47 C.F.R. § 97.101(d).

proceeding, formal or informal, or take any action on its own motion against Mr. Winstead concerning the matters that were the subject of the Investigation.

10. **Relinquishment of Amateur License.** Mr. Winstead holds an amateur license (call sign KD5OZY). In consideration for the termination of the Investigation, Mr. Winstead agrees to relinquish his amateur license. Mr. Winstead provided a signed letter requesting the Commission cancel his amateur license prior to signing this Consent Decree.

11. **Voluntary Contribution.** Mr. Winstead agrees that he will make a voluntary contribution to the United States Treasury in the amount of one thousand dollars (\$1,000) (“Voluntary Contribution”) in twelve installments (each an Installment Payment). The first Installment Payment of eighty seven dollars (\$87) must be made within thirty (30) calendar days after the Effective Date. Each successive Installment Payment of eighty three dollars (\$83) shall be due on the first day of the next eleven (11) months following the initial Installment Payment. Mr. Winstead acknowledges and agrees that upon execution of this Consent Decree the Voluntary Contribution and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1). Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. In addition, Mr. Winstead agrees that he will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. Installment Payments must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Mr. Winstead shall also send electronic notification of each Installment Payment on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. **Event of Default.** Mr. Winstead agrees that an Event of Default shall occur upon his failure to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

13. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to interest and penalties permitted under 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Mr. Winstead.

14. **Waivers.** Mr. Winstead waives any and all rights he may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Mr. Winstead shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Mr. Winstead nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Mr. Winstead shall waive any statutory right to a trial *de novo*. Mr. Winstead hereby agrees to waive any claims he may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

15. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree differs from any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Mr. Winstead does not expressly consent) regarding the same subject matter, that provision will be superseded by such Rule or Commission order.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. Mr. Winstead admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 9 herein, that his radio operations on the frequency 7.195 MHz, which were the subject of the Investigation, violated the Communications Laws.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representative.** The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

Date

James R. Winstead

Date